

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TONEY A. WHITE, III,

Plaintiff

V.

RONALD OLIVER, et al,

Defendants

Case No.: 2:23-cv-01121-APG-DJA

Order On Motions to Reconsider

[ECF Nos. 21, 22]

I. INTRODUCTION

Pro se Plaintiff Toney White, III, who is incarcerated in the custody of the Nevada

10 Department of Corrections (NDOC), files duplicate motions for reconsideration. ECF Nos. 21,

11 22. As an initial matter, I deny White's first motion without prejudice as duplicative. ECF No.

12 21. In his motion, White contends that Defendant Christopher Day was improperly dismissed in

13 the screening order (ECF No. 19 at 17) from the thirty-page second amended complaint (SAC).

14 ECF No. 22 at 1–3. Upon consideration, I agree with White and grant his motion.

II. DISCUSSION

16 A motion to reconsider must set forth "some valid reason why the court should reconsider

17 its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the

¹⁸ court to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev.

19 || 2003). Reconsideration is appropriate if this Court “(1) is presented with newly discovered

20 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is

²¹ an intervening change in controlling law.” *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263

22 (9th Cir. 1993). “A motion for reconsideration is not an avenue to re-litigate the same issues and

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1 arguments upon which the court already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378
 2 F.Supp.2d 1280, 1288 (D. Nev. 2005).

3 Considering the motion and reviewing the SAC and screening order, I grant White’s
 4 motion. ECF No. 22. White correctly notes that Day was directly involved in the allegations that
 5 gave rise to the colorable claims he stated in Claims 1, 4, and 7 of the SAC. *See* ECF No. 18 at
 6 6–8, 10, 24, 28. Therefore, I find that Plaintiff states the following colorable claims against Day:
 7 First Amendment retaliation claim (Claim 1), Eighth Amendment excessive force claim (Claim
 8 4), and the free speech claim under Article I, § 9 of the Nevada Constitution (Claim 7). Other
 9 than adding Day to these claims, the screening order (ECF No. 19) remains in full force and
 10 effect. For clarity, I will reiterate all the claims in the conclusion of this order that White brought
 11 in the SAC.

12 **III. CONCLUSION**

13 I THEREFORE ORDER that White’s motion for reconsideration at ECF No. 21 is denied
 14 without prejudice as duplicative.

15 I FURTHER ORDER that White’s motion for reconsideration (ECF No. 22) is granted.

16 I FURTHER ORDER that White’s First Amendment retaliation claim (Claim 1) will
 17 proceed against Defendants Day, Portillo, Pope, Pena, Perez, Kelly, Bancalari, B. Williams, J.
 18 Williams, Oliver, Bean, Barth, Sanchez, Gutierrez, and Ashcraft.

19 I FURTHER ORDER that White’s Eighth Amendment conditions of confinement claim
 20 (Claim 2) is dismissed without prejudice.

21 I FURTHER ORDER that White’s Eighth Amendment deliberate indifference to a
 22 serious medical need claim (Claim 3) will proceed against Defendants Liang, Garcia, Rivas,
 23 Gutierrez, Barth, Ashcraft, Sanchez, and Does 6-10, when White learns their identities.

1 I FURTHER ORDER that White's Eighth Amendment excessive force claim (Claim 4)
2 will proceed against Defendants Day, Portillo, Pope, Pena, Perez, Kelly, Bancalari, B. Williams,
3 J. Williams, Oliver, Bean, Barth, Sanchez, and Ashcraft.

4 I FURTHER ORDER that the Doe Defendants are dismissed without prejudice from
5 White's Eighth Amendment excessive force claim (Claim 4).

6 I FURTHER ORDER that White's conspiracy claim under 42 U.S.C. § 1985(3) (Claim
7 5) is dismissed without prejudice.

8 I FURTHER ORDER that White's claim under 42 U.S.C. § 1986 (Claim 6) is dismissed
9 without prejudice.

10 I FURTHER ORDER that White's free speech claim under Article I, § 9 of the Nevada
11 Constitution (Claim 7) will proceed against Defendants Day, Portillo, Pope, Pena, Perez, Kelly,
12 Bancalari, B. Williams, J. Williams, Oliver, Bean, Barth, Sanchez, Gutierrez, and Ashcraft.

13 I FURTHER ORDER that White's assault and battery claims (Claim 8) are dismissed
14 without prejudice.

15 I FURTHER ORDER that White's IIED claim (Claim 9) is dismissed without prejudice.

16 I FURTHER ORDER that White's negligence claim (Claim 10) is dismissed without
17 prejudice.

18 I FURTHER ORDER that the State of Nevada and the Nevada Board of Prison
19 Commissioners are dismissed from this action with prejudice, as amendment would be futile.

20 I FURTHER ORDER that Defendants Ford, Dzurenda, Aguilar, Lombardo, and Does 1-
21 5, 11-50 are dismissed without prejudice from the SAC.

1 I FURTHER ORDER that the Clerk of the Court electronically serve a copy of this order
2 on the Office of the Attorney General of the State of Nevada. This does not indicate acceptance
3 of service.

4 I FURTHER ORDER that, other than adding Defendant Day to Claims 1, 4, and 7 of the
5 SAC, the screening order (ECF No. 19) remains in full force and effect.

6 DATED this 20th day of February, 2024.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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